

1
2 IN THE SUPPERIOR COURT FOR THE STATE OF ALASKA
3 THIRD JUDICIAL DISTRICT AT ANCHORAGE

4 THE ALASKA CIVIL LIBERTIES UNION;)
5 DAN CARTER and AL INCONTRO; LIN)
6 DAVIS and MAUREEN LONGWORTH;)
7 SHIRLEY DEAN and CARLA TIMPONE;)
8 DARLA MADDEN and KARENWOOD;)
9 AIMEE OLEJASZ and FABIENNE PETER-)
10 CONTESSE; KAREN STURNICK and)
11 ELIZABETH ANDREWS; THERESA)
12 TAVEL and KAREN WALTER; CORIN)
13 WHITTEMORE and GANI RUTHELLEN;)
14 and ESTRA BENSUSSEN and CAROL ROSE)
15 GACKOWSKI;)

16 Plaintiffs,)

17 v.)

18 STATE OF ALASKA, and)
19 MUNICIPALITY OF ANCHORAGE,)

20 Defendants.)

Case No. 3AN-99-11179 CI

On remand from the
Alaska Supreme Court
No. S-10459

21 **STATE OF ALASKA'S FILING TO COMPLY WITH THE ORDER OF**
22 **OCTOBER 30 AS REVISED NOVEMBER 2**

23 In accordance with the orders of this court dated October 30 and
24 November 1, 2, and 6, the state files the following exhibits:

- 25 1. Regulations Draft A 11-8-06 (showing changes)
- 26 2. Regulations Draft A 11-8-06 (incorporating changes)
3. Regulations Draft B 11-8-06 (including draft 2 AAC 38.100, leave
for health and family care of same-sex partner or child of same-sex
partner).

1 The regulations drafts have not been adopted or reviewed by the
2 commissioner of administration, and there are barriers precluding any immediate
3 adoption. First, the commissioner already adopted regulations on October 13, two days
4 before the last date established for adoption of the regulations in the pre-deadline
5 statement that this court ordered the state to follow on August 9, 2006. Depending on
6 the subject matter, some of the regulations will become effective on November 12
7 (those that the commissioner has independent authority to adopt), and the remainder
8 (those that must be adopted as provided in the Administrative Procedure Act,
9 AS 44.62.020 – 44.62.290) will become effective 30 days after the lieutenant governor
10 files them.¹ Any changes to the regulations would require action either to withdraw the
11 relevant sections (which cannot be done for non-APA sections, but which may be done
12 for APA sections before the lieutenant governor files the regulations) or to repeal or
13 amend them (after those events occur).

14 Second, there are additional technical barriers in statute to the adoption of
15 the draft regulations that have been submitted. For example, a state agency did not
16 prepare, or even review, the drafts as required for APA regulations in AS 44.62.060,
17 and the regulations attorney did not perform the duties assigned to her in AS 44.62.060
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22 ¹ The regulations that have been adopted were adopted by the commissioner of
23 administration under his authority in AS 14.25.005, 22.25.027, 39.35.005, 39.37.090, and
24 39.30.090 – 39.30.095. Only the regulations concerning insurance coverage for active
25 employees under AS 39.30.090 – 39.30.095 were adopted under the Administrative Procedures
26 Act. One of the requirements in the APA is the requirement that regulations be lodged with the
Lieutenant Governor for filing and the regulations become effective 30 days after filing.
AS 44.62.180. To date, the regulations have not been filed.

1 and 44.62.125(4). Further, there is an additional technical barrier to the adoption of
2 draft 2 AAC 38.100, which has been segregated into a separate exhibit. That section
3 addresses leave for the health and family care of a same-sex partner or a child of the
4 same-sex partner. The commissioner of administration shares authority over the family
5 and health leave provisions of AS 39.20.305 with the director of personnel and the state
6 personnel board. AS 39.20.320 authorizes the director of personnel to prepare
7 regulations to implement AS 39.20.225 and 39.20.305 and for the commissioner of
8 administration to submit them to the personnel board. If the personnel board does not
9 disapprove them, the regulations become effective 30 days after their submission. To
10 properly adopt a regulation addressing family and health leave for state employees
11 requires the participation of the personnel board, which to date has not been involved.²
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14 Third, a more significant barrier prevents the adoption of 2 AAC
15 38.110—the absence of any regulatory authority whatsoever. AS 44.62.020 provides, in
16 part, that “To be effective, each regulation adopted must be within the scope of
17 authority conferred and in accordance with standards prescribed by other provisions of
18 law.” Neither the commissioner of administration, nor any other public official or
19 executive agency, has the authority to adopt a regulation directly conflicting with the
20 terms of a statute. The regulation the court has ordered the state to draft and file
21 conflicts with AS 39.20.360, and the Alaska Supreme Court has not concluded that this
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23

24 ² Furthermore, regulations adopted under AS 39.20.320 do not apply to all state
25 employees. AS 39.20.310 sets out the exceptions, which cover large groups of
26 employees, including elected officials, legislators, many judicial officers, and
employees in collective bargaining.

1 statute (which prescribes who is to receive a deceased employees' unpaid wages)
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3 violates the constitution.

4 The state has submitted these draft regulations to comply with the court's
5 request for drafting assistance. But the state respectfully asks the court to consider the
6 technical and substantive barriers that should prevent their adoption as submitted.

7 DATED November 8, 2006.

8
9 DAVID MÁRQUEZ
ATTORNEY GENERAL

10
11 By: *Virginia B. Ragle*
12 Virginia B. Ragle *by Jack Hefner*
13 Assistant Attorney General
Alaska Bar No. 8311169

Title 2 of the AAC is amended by adding a new chapter 38 to read:

**Chapter 38. Employment-Related Benefits for Same-Sex Partners of State
Employees and Retirees Under the State's Retirement Systems.**

2 AAC 38.010. Same-sex partner insurance coverage. (a) A state employee or member of a state retirement system who is covered by group insurance under AS 39.30.090 or 39.30.091, such as the state's retiree medical, Select Benefits, or Supplemental Benefits plans, or by an alternative insurance program, such as a union health trust, under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), may enroll the employee's or retirement system member's same-sex partner in the group insurance or alternative insurance program if the employee and same-sex partner or retirement system member and same-sex partner meet the requirements of this section.

(b) In order to enroll a same-sex partner in group insurance coverage provided under AS 39.30.090 or 39.30.091 or an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), the covered employee or covered member of a state retirement system shall file with the administrator of the health plan or retirement system an affidavit executed by the employee and same-sex partner or the retirement system member and same-sex partner declaring under penalty of perjury that they

(1) are at least 18 years old and are each competent to enter into a contract;

(2) have been in a [AN EXCLUSIVE,] committed[,] and intimate relationship with each other for the last consecutive six [12] months and intend to continue that relationship indefinitely;

(3) have resided together at a common primary residence for the last six [12] consecutive months and intend to reside together indefinitely;

(4) consider themselves to be members of each other's immediate family;

(5) are not related to each other to a degree of closeness that would preclude them from marrying each other in Alaska if they were of the opposite sex from each other;

(6) are neither one of them legally married to anyone else;

(7) have not executed an affidavit affirming same-sex partner status with anyone else within the last six [12] months;

(8) are each other's sole domestic partner and are each responsible for the common welfare of the other;

(9) share financial obligations, including joint responsibility for basic living expenses and health care costs;

(10) understand that, under applicable federal income tax law, payments for medical coverage of a same-sex partner or child of a same-sex partner may not be eligible for pre-tax treatment, and coverage of a same-sex partner may result in additional imputed taxable income to the covered employee, retirement system member, or survivor and related withholding for payroll, income, or pension and annuity taxes; and

(11) understand that, in addition to requirements of this section, there are terms and conditions of coverage set out in each group policy, state plan of self-insurance, or alternative insurance program to which they are bound.

(c) In order to enroll a same-sex partner in group insurance coverage provided under AS 39.30.090 or 39.30.091 or an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), and upon request of the health plan or retirement system administrator after enrollment, the covered state employee or member of a state retirement system shall provide documentation establishing that the employee and same-sex partner or retirement system member and same-sex partner are jointly responsible for a child through adoption or guardianship, or that they meet at least three [FIVE] of the following criteria:

(1) joint interest in real property, as evidenced by title or mortgage, lease, or rental agreement, by the employee or retirement system member and the same-sex partner;

(2) joint ownership or purchase of a motor vehicle by the employee or retirement system member and the same-sex partner;

(3) joint ownership of a checking, savings, or investment account or joint liability for a loan or credit account by the employee or retirement system member and the same-sex partner;

(4) the same-sex partner is named as primary beneficiary for a life insurance policy of the employee or retirement system member;

(5) the same-sex partner is named as primary beneficiary for the employee's or retirement system member's pension or annuity plan benefits, deferred compensation plan, Individual Retirement Arrangement or Account, 401(k) plan, Keogh plan, or other tax-deferred or taxable plan;

(6) the same-sex partner is named as primary beneficiary in the employee's or retirement system member's will;

(7) the same-sex partner has authority to deal with property owned by the employee or retirement system member under a valid written power of attorney;

(8) the employee or retirement system member has given the same-sex partner written authority to make decisions concerning the employee's or retirement system member's health and well being if the employee or retirement system member is unable to do so.

(d) An employee or member of a state retirement system who enrolls a same-sex partner in coverage under this section may also enroll the child of the same-sex partner if the child is unmarried, is dependent on the employee or retirement system member for support, and meets other requirements set out in the group policy, state plan of self-insurance, or alternative insurance program, and applicable statute governing the retirement system, including age and applicable school enrollment requirements.

(e) An employee or member of a state retirement system who has enrolled a same-sex partner, or a same-sex partner and child, in coverage under this section shall provide written confirmation of eligibility of the enrolled person, supplementing documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in suspension of coverage of the enrolled person.

(f) An employee or retirement system member who enrolls a same-sex partner in coverage under this section shall agree that, if the employee or retirement system member and same-sex partner no longer meet the requirements of this section, the employee or retirement system member will file with the administrator of each plan in which the same-sex partner is enrolled a written statement of termination of eligibility within 30 days of the date eligibility ends. Eligibility of the same-sex partner for benefits of a plan will terminate on midnight of the date eligibility ends as declared in writing by the employee or retirement system member. Failure to notify the plan administrator of termination of eligibility will result in liability of the employee or retirement system member for any resulting overpayment of benefits under the plan. Continuation of coverage will be offered to the former same-sex partner of the employee or retirement system member as if a divorce had occurred.

(g) An employee or retirement system member who enrolls a same-sex partner, or same-sex partner and eligible child under (d) of this section, in coverage under this

section shall pay any premium established by the plan that an employee or retirement system member is required to pay for comparable coverage for a spouse or spouse and dependent child.

(h) In this section, "resided together at a common primary residence" requires the employee or member of a state retirement system and the employee's or member's same-sex partner to share the same domicile. The common primary residence can change during the 12-month period set out in (b) of this section. Once an employee or member of a state retirement system and same-sex partner have begun to reside together at a common primary residence, absence by the employee or retirement system member or the same-sex partner required for employment that requires periodic absence from the common primary residence, education, medical reasons, military service, or other reasons determined by the plan administrator will not result in a break in eligibility, as long as the absent employee, retirement system member, or same-sex partner intends to return to common primary residence. (Eff. ___/___/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
AS 22.25.027 AS 39.35.005

2 AAC 38.030. Enrollment of same-sex partner and same-sex partner's eligible child. (a) A special enrollment will be conducted after the effective date of this section, to allow enrollment of eligible same-sex partners and eligible children of same-sex partners in group insurance plans described in 2 AAC 38.010(a). If the terms of a

group insurance plan described in 2 AAC 38.010(a) allow enrollment of a spouse or family at only a specific time, such as the date of retirement of a member of the retirement system, in order to enroll a same sex partner or child of a same-sex partner in the plan during the special enrollment, the employee or member of a state retirement system must establish that the requirements of 2 AAC 38.010(b) and (c) were met at the time specified by the terms of the plan.

(b) Following the special enrollment, enrollment of a same-sex partner or child of a same-sex partner may occur only at a subsequent open enrollment or upon the occurrence of a qualifying status change and in accordance with the terms of the plan. For purposes of a plan described in 2 AAC 38.010(a) that allows an employee or member of a state retirement system to enroll a spouse or dependent child within a period of time after a qualifying status change occurs, such as a change in family structure, ineligibility for other coverage or change in insurance coverage, a qualifying status change for enrollment of the employee's or retirement system member's same-sex partner or eligible children of a same-sex partner occurs on the date upon which

(1) the employee or retirement system member is first able to meet the requirements of 2 AAC 38.010(b) and (c), if the plan allows enrollment of a spouse and eligible dependent children when a plan member marries;

(2) a status change occurs related to the same-sex partner that would constitute a qualifying status change event under the terms of the plan if the status change related to the spouse of the employee or retirement system member.

(c) The employee or retirement system member should provide the documentation required by 2 AAC 38.010(c) within 90 days of filing an enrollment form with the administrator of a plan under AS 39.30.090 or 39.30.091, or if the enrollment is filed with the administrator of an alternative insurance program under AS 39.30.090(a)(2), within the time provided by the alternative insurance program plan. Once the documentation required under 2 AAC 38.010(c) is received by the administrator of a plan under AS 39.30.090 or 39.30.091, coverage of the eligible same-sex partner is effective on the latest of the first day of the month after the enrollment form is received by the plan administrator, the date of the employee's appointment to receive retirement or disability benefits if the enrollment is for a retiree insurance plan, the date coverage is allowed under the terms of an open enrollment if the enrollment is filed under the open enrollment, or January 1, 2007. Payment will not be made on covered claims until eligibility is established under 2 AAC 38.010. No payment will be made on claims arising more than 12 months before eligibility is established under 2 AAC 38.010.

(d) This section does not authorize or require a change in type or level of coverage if such a change is not allowed by federal regulations governing mid-year changes in coverage or under the provisions of the plan, nor does this section prohibit mid-year changes in the type or level of coverage if such change is required by federal regulations or permitted under the provisions of the plan. Changes in the type or level of coverage may be made during any regular open enrollment period of the plan, if allowed by federal regulations governing the plan.

(e) To the extent permitted by federal regulations, a same-sex partner and eligible child of a same-sex partner will be considered dependents under the plan for purposes of eligibility, including continuation of coverage and HIPAA portability rights, even if the individual does not qualify as a dependent for federal tax purposes. (Eff. ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005

2 AAC 38.050. Imputation of income and effect on pre-tax premiums. (a)

Income will be imputed for federal tax purposes to

(1) an employee or member of a state retirement system who enrolls a same-sex partner or child of a same-sex partner who is not an eligible dependent under 26 U.S.C. 152 (without regard to 26 U.S.C. 152(b)(1), (b)(2) and (d)(1)(B)) in group insurance coverage under 2 AAC 38.010;

(2) a same-sex partner of a member of a state retirement system if the same-sex partner was not an eligible dependent of the member under 26 U.S.C. 152 (without regard to 26 U.S.C. 152(b)(1), (b)(2) and (d)(1)(B)) at the time of the member's death and if the same-sex partner is enrolled in group insurance coverage as a survivor of the member under 2 AAC 38.010.

(b) The amount of income imputed to an employee, retirement system member, or survivor under this section will be based on the fair market value of the coverage

provided to the non-dependent same-sex partner as established by the administrator of the state's employee and retiree health plans. The fair market value of coverage provided by a union health trust under an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2) will be established in consultation with the applicable trust.

(c) If an employee's premium payment for group insurance coverage of a same-sex partner or child of a same-sex partner is not eligible for pre-tax treatment, the premium payment will be deducted on a post-tax basis in the amount established by the administrator of the applicable plan.

(d) Income imputed under this section does not constitute compensation for purposes of determining employer or employee contributions or computation of benefits under the state's retirement systems or Alaska Supplemental Annuity Plan. (Eff.

___/___/___, Register ___)

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|------------|--------------|--------------|---------------------|
| Authority: | AS 14.25.005 | AS 39.30.090 | Former AS 39.37.090 |
| | AS 22.25.027 | AS 39.35.005 | |

2 AAC 38.070. Same-sex partner survivor benefits. (a) A state employee or member of a state retirement system may designate the employee's or retirement system member's same-sex partner as the beneficiary to receive survivor benefits that are available to an employee's or retirement system member's surviving spouse in accordance with this section. Survivor benefits are payable to a same-sex partner

designated under this section to the extent the benefits are not payable to a former spouse under the terms of a qualified domestic relations order.

(b) A designation of a same-sex partner to receive survivor benefits that may be paid to a person other than a spouse under applicable statute is valid to the same extent the designation of any other non-spouse beneficiary is valid under the statute.

(c) A designation by a member of a state retirement system of a same-sex partner as beneficiary to receive survivor benefits that are available to a surviving spouse under AS 14.25.155, AS 14.25.157, AS 14.25.160, AS 14.25.162, AS 14.25.164, AS 14.25.167, AS 14.25.420, AS 14.25.485, AS 14.25.487, AS 22.25.030, AS 39.35.420, AS 39.35.430, AS 39.35.440, AS 39.35.450, AS 39.35.890, AS 39.35.892, or former AS 39.37.060 is not valid unless the member files with the administrator

(1) with the designation of beneficiary an affidavit executed by the member and the same-sex partner making the declarations, under penalty of perjury, set out in 2 AAC 38.010(b); and

(2) documentation establishing that the member and same-sex partner are jointly responsible for a child through adoption or guardianship, or meet at least three [FIVE] of the criteria set out in 2 AAC 38.010(c).

(d) A deceased employee's or retirement system member's same-sex partner whom the administrator determines is validly designated as the employee's or member's beneficiary to receive survivor benefits has the same rights to survivor benefits, including group insurance and alternative insurance benefits available under the applicable plan,

that a surviving spouse would have, and is subject to the same requirements that a surviving spouse would be subject to relating to those benefits.

(e) An employee or member of a state retirement system may revoke a designation of beneficiary under this section at any time. After the date of retirement, a member's revocation of the designation of the member's same-sex partner as the beneficiary to receive survivor benefits does not change the form or amount of a joint and survivor benefit payable to the member or allow designation of a different beneficiary to receive the joint and survivor benefit.

(f) An employee or member of a state retirement system who has designated a same-sex partner as beneficiary under this section shall provide written confirmation of the designation, supplementing documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in ineligibility of the designated same-sex partner for survivor benefits. (Eff. ___/___/_____, Register _____)

Authority: AS 14.25.005 AS 39.35.005 Former AS 39.37.090
AS 22.25.027

2 AAC 38.100. Responsibilities and rights of a state employee or member of a state retirement system and same-sex partner. It is the responsibility of a state

employee or member of a state retirement system to comply with all requirements of an insurance, retirement, or benefit plan or program, including all application, designation, affidavit, and documentation requirements, in order to provide or allow provision of benefits to the employee's or retirement system member's same-sex partner. Except when specifically provided by this chapter or the terms of an insurance, retirement, or benefit plan or program, an employee's or retirement system member's compliance with the application, affidavit, and documentation requirements of a plan or program does not entitle the employee's or retirement system member's same-sex partner to rights or benefits under a different plan or program. Nothing in this chapter supersedes the requirements of a court order regarding rights or benefits of a former spouse or dependents of an employee or retirement system member. Nothing in this chapter provides, or allows the provision of, any right or benefit to the same-sex partner of an employee or retirement system member that would not be available to the spouse of the employee or retirement system member. (Eff. ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
AS 22.25.027 AS 39.35.005

2 AAC 38.110. Unpaid compensation of deceased employee. All unpaid compensation due to a deceased employee of the state who did not file a designation of beneficiary or beneficiaries with the Department of Administration under AS 39.20.360 shall be paid to the same-sex partner of the employee if the same-sex

partner is enrolled by the employee in a group insurance or alternative insurance
program or is validly designated as the employee's beneficiary for survivor benefits
under this chapter at the time of the employee's death.

Authority: None

Title 2 of the AAC is amended by adding a new chapter 38 to read:

**Chapter 38. Employment-Related Benefits for Same-Sex Partners of State
Employees and Retirees Under the State's Retirement Systems.**

2 AAC 38.010. Same-sex partner insurance coverage. (a) A state employee or member of a state retirement system who is covered by group insurance under AS 39.30.090 or 39.30.091, such as the state's retiree medical, Select Benefits, or Supplemental Benefits plans, or by an alternative insurance program, such as a union health trust, under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), may enroll the employee's or retirement system member's same-sex partner in the group insurance or alternative insurance program if the employee and same-sex partner or retirement system member and same-sex partner meet the requirements of this section.

(b) In order to enroll a same-sex partner in group insurance coverage provided under AS 39.30.090 or 39.30.091 or an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), the covered employee or covered member of a state retirement system shall file with the administrator of the health plan or retirement system an affidavit executed by the employee and same-sex partner or the retirement system member and same-sex partner declaring under penalty of perjury that they

(1) are at least 18 years old and are each competent to enter into a contract;

(2) have been in a committed and intimate relationship with each other for the last consecutive six months and intend to continue that relationship indefinitely;

(3) have resided together at a common primary residence for the last six consecutive months and intend to reside together indefinitely;

(4) consider themselves to be members of each other's immediate family;

(5) are not related to each other to a degree of closeness that would preclude them from marrying each other in Alaska if they were of the opposite sex from each other;

(6) are neither one of them legally married to anyone else;

(7) have not executed an affidavit affirming same-sex partner status with anyone else within the last six months;

(8) are each other's sole domestic partner and are each responsible for the common welfare of the other;

(9) share financial obligations, including joint responsibility for basic living expenses and health care costs;

(10) understand that, under applicable federal income tax law, payments for medical coverage of a same-sex partner or child of a same-sex partner may not be eligible for pre-tax treatment, and coverage of a same-sex partner may result in additional imputed taxable income to the covered employee, retirement system member, or survivor and related withholding for payroll, income, or pension and annuity taxes; and

(11) understand that, in addition to requirements of this section, there are terms and conditions of coverage set out in each group policy, state plan of self-insurance, or alternative insurance program to which they are bound.

(c) In order to enroll a same-sex partner in group insurance coverage provided under AS 39.30.090 or 39.30.091 or an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2), and upon request of the health plan or retirement system administrator after enrollment, the covered state employee or member of a state retirement system shall provide documentation establishing that the employee and same-sex partner or retirement system member and same-sex partner are jointly responsible for a child through adoption or guardianship, or that they meet at least three of the following criteria:

(1) joint interest in real property, as evidenced by title or mortgage, lease, or rental agreement, by the employee or retirement system member and the same-sex partner;

(2) joint ownership or purchase of a motor vehicle by the employee or retirement system member and the same-sex partner;

(3) joint ownership of a checking, savings, or investment account or joint liability for a loan or credit account by the employee or retirement system member and the same-sex partner;

(4) the same-sex partner is named as primary beneficiary for a life insurance policy of the employee or retirement system member;

(5) the same-sex partner is named as primary beneficiary for the employee's or retirement system member's pension or annuity plan benefits, deferred compensation plan, Individual Retirement Arrangement or Account, 401(k) plan, Keogh plan, or other tax-deferred or taxable plan;

(6) the same-sex partner is named as primary beneficiary in the employee's or retirement system member's will;

(7) the same-sex partner has authority to deal with property owned by the employee or retirement system member under a valid written power of attorney;

(8) the employee or retirement system member has given the same-sex partner written authority to make decisions concerning the employee's or retirement system member's health and well being if the employee or retirement system member is unable to do so.

(d) An employee or member of a state retirement system who enrolls a same-sex partner in coverage under this section may also enroll the child of the same-sex partner if the child is unmarried, is dependent on the employee or retirement system member for support, and meets other requirements set out in the group policy, state plan of self-insurance, or alternative insurance program, and applicable statute governing the retirement system, including age and applicable school enrollment requirements.

(e) An employee or member of a state retirement system who has enrolled a same-sex partner, or a same-sex partner and child, in coverage under this section shall provide written confirmation of eligibility of the enrolled person, supplementing documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in suspension of coverage of the enrolled person.

(f) An employee or retirement system member who enrolls a same-sex partner in coverage under this section shall agree that, if the employee or retirement system member and same-sex partner no longer meet the requirements of this section, the employee or retirement system member will file with the administrator of each plan in which the same-sex partner is enrolled a written statement of termination of eligibility within 30 days of the date eligibility ends. Eligibility of the same-sex partner for benefits of a plan will terminate on midnight of the date eligibility ends as declared in writing by the employee or retirement system member. Failure to notify the plan administrator of termination of eligibility will result in liability of the employee or retirement system member for any resulting overpayment of benefits under the plan. Continuation of coverage will be offered to the former same-sex partner of the employee or retirement system member as if a divorce had occurred.

(g) An employee or retirement system member who enrolls a same-sex partner, or same-sex partner and eligible child under (d) of this section, in coverage under this

section shall pay any premium established by the plan that an employee or retirement system member is required to pay for comparable coverage for a spouse or spouse and dependent child.

(h) In this section, "resided together at a common primary residence" requires the employee or member of a state retirement system and the employee's or member's same-sex partner to share the same domicile. The common primary residence can change during the 12-month period set out in (b) of this section. Once an employee or member of a state retirement system and same-sex partner have begun to reside together at a common primary residence, absence by the employee or retirement system member or the same-sex partner required for employment that requires periodic absence from the common primary residence, education, medical reasons, military service, or other reasons determined by the plan administrator will not result in a break in eligibility, as long as the absent employee, retirement system member, or same-sex partner intends to return to common primary residence. (Eff. ___/___/_____, Register _____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
AS 22.25.027 AS 39.35.005

2 AAC 38.030. Enrollment of same-sex partner and same-sex partner's eligible child. (a) A special enrollment will be conducted after the effective date of this section, to allow enrollment of eligible same-sex partners and eligible children of same-sex partners in group insurance plans described in 2 AAC 38.010(a). If the terms of a

group insurance plan described in 2 AAC 38.010(a) allow enrollment of a spouse or family at only a specific time, such as the date of retirement of a member of the retirement system, in order to enroll a same sex partner or child of a same-sex partner in the plan during the special enrollment, the employee or member of a state retirement system must establish that the requirements of 2 AAC 38.010(b) and (c) were met at the time specified by the terms of the plan.

(b) Following the special enrollment, enrollment of a same-sex partner or child of a same-sex partner may occur only at a subsequent open enrollment or upon the occurrence of a qualifying status change and in accordance with the terms of the plan. For purposes of a plan described in 2 AAC 38.010(a) that allows an employee or member of a state retirement system to enroll a spouse or dependent child within a period of time after a qualifying status change occurs, such as a change in family structure, ineligibility for other coverage or change in insurance coverage, a qualifying status change for enrollment of the employee's or retirement system member's same-sex partner or eligible children of a same-sex partner occurs on the date upon which

(1) the employee or retirement system member is first able to meet the requirements of 2 AAC 38.010(b) and (c), if the plan allows enrollment of a spouse and eligible dependent children when a plan member marries;

(2) a status change occurs related to the same-sex partner that would constitute a qualifying status change event under the terms of the plan if the status change related to the spouse of the employee or retirement system member.

DRAFT A 11-8-06 (conforming to Order (Super. Ct. 3d Jud. Dist. Oct. 30, 2006))
Incorporating Changes

(c) The employee or retirement system member should provide the documentation required by 2 AAC 38.010(c) within 90 days of filing an enrollment form with the administrator of a plan under AS 39.30.090 or 39.30.091, or if the enrollment is filed with the administrator of an alternative insurance program under AS 39.30.090(a)(2), within the time provided by the alternative insurance program plan. Once the documentation required under 2 AAC 38.010(c) is received by the administrator of a plan under AS 39.30.090 or 39.30.091, coverage of the eligible same-sex partner is effective on the latest of the first day of the month after the enrollment form is received by the plan administrator, the date of the employee's appointment to receive retirement or disability benefits if the enrollment is for a retiree insurance plan, the date coverage is allowed under the terms of an open enrollment if the enrollment is filed under the open enrollment, or January 1, 2007. Payment will not be made on covered claims until eligibility is established under 2 AAC 38.010. No payment will be made on claims arising more than 12 months before eligibility is established under 2 AAC 38.010.

(d) This section does not authorize or require a change in type or level of coverage if such a change is not allowed by federal regulations governing mid-year changes in coverage or under the provisions of the plan, nor does this section prohibit mid-year changes in the type or level of coverage if such change is required by federal regulations or permitted under the provisions of the plan. Changes in the type or level of coverage may be made during any regular open enrollment period of the plan, if allowed by federal regulations governing the plan.

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(e) To the extent permitted by federal regulations, a same-sex partner and eligible child of a same-sex partner will be considered dependents under the plan for purposes of eligibility, including continuation of coverage and HIPAA portability rights, even if the individual does not qualify as a dependent for federal tax purposes. (Eff. ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
AS 22.25.027 AS 39.35.005

2 AAC 38.050. Imputation of income and effect on pre-tax premiums. (a)

Income will be imputed for federal tax purposes to

(1) an employee or member of a state retirement system who enrolls a same-sex partner or child of a same-sex partner who is not an eligible dependent under 26 U.S.C. 152 (without regard to 26 U.S.C. 152(b)(1), (b)(2) and (d)(1)(B)) in group insurance coverage under 2 AAC 38.010;

(2) a same-sex partner of a member of a state retirement system if the same-sex partner was not an eligible dependent of the member under 26 U.S.C. 152 (without regard to 26 U.S.C. 152(b)(1), (b)(2) and (d)(1)(B)) at the time of the member's death and if the same-sex partner is enrolled in group insurance coverage as a survivor of the member under 2 AAC 38.010.

(b) The amount of income imputed to an employee, retirement system member, or survivor under this section will be based on the fair market value of the coverage

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provided to the non-dependent same-sex partner as established by the administrator of the state's employee and retiree health plans. The fair market value of coverage provided by a union health trust under an alternative insurance program under an exemption allowed by regulations adopted by the commissioner under AS 39.30.090(a)(2) will be established in consultation with the applicable trust.

(c) If an employee's premium payment for group insurance coverage of a same-sex partner or child of a same-sex partner is not eligible for pre-tax treatment, the premium payment will be deducted on a post-tax basis in the amount established by the administrator of the applicable plan.

(d) Income imputed under this section does not constitute compensation for purposes of determining employer or employee contributions or computation of benefits under the state's retirement systems or Alaska Supplemental Annuity Plan. (Eff.

___/___/___, Register ___)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
 AS 22.25.027 AS 39.35.005

2 AAC 38.070. Same-sex partner survivor benefits. (a) A state employee or member of a state retirement system may designate the employee's or retirement system member's same-sex partner as the beneficiary to receive survivor benefits that are available to an employee's or retirement system member's surviving spouse in accordance with this section. Survivor benefits are payable to a same-sex partner

designated under this section to the extent the benefits are not payable to a former spouse under the terms of a qualified domestic relations order.

(b) A designation of a same-sex partner to receive survivor benefits that may be paid to a person other than a spouse under applicable statute is valid to the same extent the designation of any other non-spouse beneficiary is valid under the statute.

(c) A designation by a member of a state retirement system of a same-sex partner as beneficiary to receive survivor benefits that are available to a surviving spouse under AS 14.25.155, AS 14.25.157, AS 14.25.160, AS 14.25.162, AS 14.25.164, AS 14.25.167, AS 14.25.420, AS 14.25.485, AS 14.25.487, AS 22.25.030, AS 39.35.420, AS 39.35.430, AS 39.35.440, AS 39.35.450, AS 39.35.890, AS 39.35.892, or former AS 39.37.060 is not valid unless the member files with the administrator

(1) with the designation of beneficiary an affidavit executed by the member and the same-sex partner making the declarations, under penalty of perjury, set out in 2 AAC 38.010(b); and

(2) documentation establishing that the member and same-sex partner are jointly responsible for a child through adoption or guardianship, or meet at least three of the criteria set out in 2 AAC 38.010(c).

(d) A deceased employee's or retirement system member's same-sex partner whom the administrator determines is validly designated as the employee's or member's beneficiary to receive survivor benefits has the same rights to survivor benefits, including group insurance and alternative insurance benefits available under the applicable plan,

that a surviving spouse would have, and is subject to the same requirements that a surviving spouse would be subject to relating to those benefits.

(e) An employee or member of a state retirement system may revoke a designation of beneficiary under this section at any time. After the date of retirement, a member's revocation of the designation of the member's same-sex partner as the beneficiary to receive survivor benefits does not change the form or amount of a joint and survivor benefit payable to the member or allow designation of a different beneficiary to receive the joint and survivor benefit.

(f) An employee or member of a state retirement system who has designated a same-sex partner as beneficiary under this section shall provide written confirmation of the designation, supplementing documentation provided under (c) of this section if that information has changed, upon request of and in the manner requested by the plan administrator. Failure to provide written confirmation requested by the plan administrator may result in ineligibility of the designated same-sex partner for survivor benefits. (Eff. ___/___/_____, Register _____)

Authority: AS 14.25.005 AS 39.35.005 Former AS 39.37.090
AS 22.25.027

2 AAC 38.100. Responsibilities and rights of a state employee or member of a state retirement system and same-sex partner. It is the responsibility of a state

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employee or member of a state retirement system to comply with all requirements of an insurance, retirement, or benefit plan or program, including all application, designation, affidavit, and documentation requirements, in order to provide or allow provision of benefits to the employee's or retirement system member's same-sex partner. Except when specifically provided by this chapter or the terms of an insurance, retirement, or benefit plan or program, an employee's or retirement system member's compliance with the application, affidavit, and documentation requirements of a plan or program does not entitle the employee's or retirement system member's same-sex partner to rights or benefits under a different plan or program. Nothing in this chapter supersedes the requirements of a court order regarding rights or benefits of a former spouse or dependents of an employee or retirement system member. Nothing in this chapter provides, or allows the provision of, any right or benefit to the same-sex partner of an employee or retirement system member that would not be available to the spouse of the employee or retirement system member. (Eff. ____/____/____, Register ____)

Authority: AS 14.25.005 AS 39.30.090 Former AS 39.37.090
AS 22.25.027 AS 39.35.005

2 AAC 38.110. Unpaid compensation of deceased employee. All unpaid compensation due to a deceased employee of the state who did not file a designation of beneficiary or beneficiaries with the Department of Administration under AS 39.20.360 shall be paid to the same-sex partner of the employee if the same-sex partner is enrolled

by the employee in a group insurance or alternative insurance program or is validly designated as the employee's beneficiary for survivor benefits under this chapter at the time of the employee's death.

Authority: None

2 AAC 38 is amended by adding a new section to read:

2 AAC 38.100. Leave for health and family care or death of same-sex partner or child of same-sex partner. (a) A state employee who is eligible to take leave under AS 39.20.225 or AS 39.20.305 and who meets the requirements of (b) of this section may take leave as provided in AS 39.20.225(b)(2) or (5) or 39.20.305

(1) because of the birth of a child of the employee's same-sex partner;

(2) to care for the employee's same-sex partner or the child of the employee's same-sex partner if the same-sex partner or child has a serious health condition;

(3) because of the death of the employee's same-sex partner or the child of the employee's same-sex partner.

(b) To be eligible for leave for the reasons set out in (a) of this section, the state employee must file with the employer an affidavit executed by the employee and the same-sex partner making the declarations, under penalty of perjury, set out in 2 AAC 38.010(b) and the employee must provide the employer with documentation establishing that the employee and same-sex partner are jointly responsible for a child through adoption or guardianship or meet at least three of the criteria set out in 2 AAC 38.010(c). An affidavit and documentation meeting the requirements of 2 AAC 38.010 that has been filed with the employer or administrator for purposes of establishing entitlement to enrollment of the same-sex partner in group insurance under 2 AAC 38.010 or designation of the same-sex partner as beneficiary for survivor benefits under 2 AAC 38.070 are sufficient to meet the requirements of this subsection if the affidavit and

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documentation are current and have not been revoked by the state employee. (Eff.

___/___/___, Register ___)

Authority: AS 39.20.320

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

THE ALASKA CIVIL LIBERTIES UNION,
et al.,

Plaintiffs,

vs.

STATE OF ALASKA, et al.,

Defendants.

Case No. 3AN-99-11179 CI
On remand from the
Alaska Supreme Court
No. S-10459

CERTIFICATE OF SERVICE

The undersigned certifies that, on November 8, 2006, copies of the
**STATE OF ALASKA'S FILING TO COMPLY WITH THE ORDER OF
OCTOBER 30 AS REVISED NOVEMBER 2** and this **CERTIFICATE OF
SERVICE** in this proceeding were served via facsimile transmission or USPS first class
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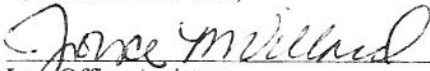
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